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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY

{*THE DEFENDANT'S STATEMENT OF ADDITIONAL GROUNDS Pursuant To *RAP 10.10*} *Court Of Appeals
Case No. 48960-1-II

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STATE OF WASHINGTON

{*IN THE COURT OF APPEALS OF WASHINGTON STATE*}

TWO
{*DIVISION II*}

State Of Washington,

Respondent.

v

Jermaine Gore

Appellant.

No. 48960-1-II

Defendant's Statement Of Additional
Grounds Pursuant RAP 10.10

{*IDENTITY OF PARTY*}

Pursuant To *RAP 10 10, The Appellant, *Jermaine Laron Abdul Gore, Comes Now On Direct Appeal To Make A Record *Factual Assertion Of A Terry Violation In Which Should Be Review For Plain Error Because The Officer's Unlawfully Seized The Defendant [And] The Defendant's Car An Cell Phone Without Probable Cause. See: The Reporting Proceedings In This Case. Slip Ops.

{*ISSUES PRESENTED*}

1. Whether Trial Court Erred In Not Suppressing The Evidence Seized From The Defendant's Cell Phone And Car Which Was Legally Parked, When The Defendant Was Unlawfully Seized By Officers In Violation Of *Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (U.S. 1968), Now Warranting A Reversal Of His Convictions?

2. Whether The Trial Court Erred In Not Suppressing The Evidence From The Search Of *Mr. Gore's Vehicle Since The Complaint For The Search Warrant Contained Insufficient Facts To Establish A Nexus Between *Mr. Gore's Vehicle And Any Suspected Criminal Activity Required Under State And Federal Constitutions, Now Warranting A Reversal Of His Convictions?

{*STATEMENT OF FACTS*}

This Case Stems From The Murder Of 19 Year Old *Brandon Morris, Who Happened To Be In The Wrong Place At The Wrong Time On May 1, 2015, When He Was Hit In The Head And Killed By Gang-Related Gunfire.

The Defendant, *Mr. Jermaine Gore, Was Not In No Way Involved With The Murder And At The Time Of The Officers Involved In The Hunt For The Alleged Suspect's *Mr. Gore Was Still Unaware Of Any Murder.

However, Law Enforcement Quickly *Identified As Suspects In The Murder, *Alexander Kitt, No. 15-1-01787-1; *Lance Milton Ausley, 15-1-01792-8; *Jeremy Bolieu, No. 15-1-01793-6, And *Trevion Tucker, No. 15-1-05102-6.

On May 5, 2015, Federal Agents And State Officers Were Conducting Surveillance At Pierce County Alliance Were *Kitt (One Of The Suspects) Was Expected For An *Appointment.

On The Afternoon Of May 5, 2015, Various Law Enforcement Offices Were Waiting At A Drug-Treatment Facility, Pierce County Alliance, For The Arrival Of *Alexander Kitt.

Probable Cause Did Exist To Arrest *Kitt For A Drive-By Shooting Turned Homicide Case And The Officers Did Have An Arrest Warrant For Him And Him Only.

At 3:36 p.m., Tacoma Police Officer's *Kevin Wales And *Jeffrey Thiry Were Stationed Nearby When They Were "Informed Via Radio" By Another Officer That *Kitt Had Just Arrived To The Pierce County Alliance

Officer's *Wales And *Thiry Were Told That, ""Kitt Had Been *Dropped Off By A Two-Tone Cadillac Deville, That There Were Several People Still In The Cadillac, And That The Occupants Of That Car Had Then Drove *Off And Parked On A Nearby Street. Ostensibly Waiting For *Kitt's Return."

Officer's *Wales And *Thiry Made The Decision To *Contact The Occupants Of The Cadillac And *Told Them To Keep Their *Hands Visible While Remaining In The Car.

The Officer's Were Wearing Standard Police-Issued Uniforms Including A Duty Belt With A Firearm Holstered On The Hip.

The Officers Were In A Standard Police Patrol Vehicle With Visible And Clear Police Insignia And Light.

The Officer's Spotted The Cadillac, Which Was "Legally Parked" In The 600 Block Of South 5th Street On The Side Of The Road With The Engine *Off

The Officers Parked Their Patrol Car In A Lane To Travel Approximately 50 To 100 Feet From The Cadillac. The Patrol Car Faced The Cadillac

The Officer's *Exited The Patrol Car And Walked Up To The Cadillac. Three People Were Inside The Cadillac And The Windows Were All Rolled Down. The Defendant's 40+ Year Old *Jermaine Gore Was In The Driver's Seat; Jermaine's 16-Year-Old Son, *Jermohnn Gore, Was In The Rear Driver's-Side Seat, And *Ladell Moton, 22 Year Old, Was In The Rear Passenger-Side Seat.

Officer *Thiry Stood On The Driver's Side Of The Cadillac And Spoke With The Gore's.

Officer *Wales Stood On The Passenger Side Of The Cadillac And Spoke With *Mr. Moton

At Some Point Shortly Thereafter, Officer *Wales Was Joined On The Passenger Side By A Second Officer Believed To Be A U.S. Deputy Marshall.

The Defendant, *Jermaine Gore, Provided The Officer With ID And The Officer Cleared Him

However, The Same Officer Detained *Jermaine Gore And Had Him Transported To The Tacoma Police Department.

*Jermaine Gore's Car Was Also Seized And Impounded Pending The Issuance Of A Search Warrant Of The Vehicle.

Two Days After The Car Was Impounded, A Search Warrant Was Issued And The Car Was Searched From Evidence Of The Murder Unrelated To *Jermaine Gore.

*Jermaine Gore Was Charged Two Months Later With And Was Tried On Four Counts Which Are Listed As:

Count One: Unlawful Possession Of A Firearm In The First Degree *RCW 9A.040(1)(a)

Count Two: Unlawful Possession Of A Controlled Substance With Intent To Deliver *RCW 69.50.401(1)(2)(a) - (i)

Count Three: Unlawful Possession Of A Controlled Substance With Intent To Deliver *RCW 69.50.401(1)(2)(a) - (i)

Count Four: Rendering Criminal Assistance In The First Degree *RCW 9A.76.050(3), *RCW 9A.76.070(2)(a)

{*ARGUMENT*}

*Mr. Gore Does Challenge The Trial Court's Findings Of Fact. As Such, They Are Verities On Appeal. See: *State v. O'Neill, 148 Wash.2d 564, 571, 62 P.3d 489 (Wash. 2003).

Under Washington Law, "A Trial Court's Conclusions Of Law In Rulings On Motions To Suppress Are Reviewed De Novo." See: *State v. Marcum, 149 Wash.App 894, 902 n. 3, 205 P.3d 969 (Div. 1, 2009).

Thus, All The Evidence Seized *After *Mr. Gore's Unlawful Detention Should Be Suppressed In The Interest Of Justice.

{1. THE TRIAL COURT ERRED IN NOT SUPPRESSING THE EVIDENCE SEIZED FROM *MR. GORE'S CELL PHONE AND CAR WHICH WAS LEGALLY PARKED, WHEN THE HE WAS UNLAWFULLY SEIZED BY OFFICERS IN VIOLATION OF *Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed 2d 889 (U.S. 1968).*

*Mr. Gore Contends Here That, "His *Investigative Detention, Search And Seizure Of His *Cell Phone As Well As The Seizure And *Impound Of His Car In Which Was Legally Parked Was Unlawful And That The Evidence Obtained As A Consequence Of The Unlawful *Detention Of *Jermaine Gore Should Have Been Suppressed." See: *Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (U.S. 1968). Slip Ops.

If Officer *Jeffrey Thiry Did Not Seize *Jermaine Gore, The Officers Need No *Justification To Interact With *Mr. Gore. See *Terry v. Ohio, 392 U.S. 1, 19 n. 16, 88 S.Ct. 1868, 20 L.Ed.2d 889 (U.S. 1968).

However, If The Officer *Thiry Seized *Mr. Gore, We Would Need To Determine If The Officer Had *Sufficient Grounds For The Seizure. See: *Terry v. Ohio, 392 U.S. 1, at 19, 88 S.Ct. 1868, 20 L.Ed.2d 889 (U.S. 1968). Slip Ops

This Court Can Answer That Determination As *No, Because The Officers Only Sought To Detain *Mr. Kitt For Who They Wanted For Murder. See: The Record. Slip Ops

Warrantless Seizures Are Prohibited By The Fourth Amendment To The United States Constitution And Article I, Sec. 7 Of The Washington Constitution, Unless Falling Within Several Narrow Exceptions. See: *State v. Doughty, 170 Wash.2d 57, 61, 239 P.3d 573 (Wash. 2010).

One Such Exception Is An Investigation Detention, Or "Terry Stop," During Which A Police Officer May Briefly Detain A Person For Questioning Without A Warrant And On Grounds Amounting To Less Than Probable Cause See: *Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed 2d 889 (U.S. 1968); *State v. Doughty, 170 Wash.2d 57, 61-62, 239 P.3d 573 (Wash. 2010); *State v. Kennedy, 107 Wash.2d 1, 4-6, 726 P.2d 445 (Wash. 1986)

An Investigative Detention, While Falling Short Of An Arrest, Is Nonetheless A Seizure For The Purposes Of The Fourth Amendment And Article I, Sec. 7. See: *Terry v. Ohio, 392 U.S. 1, at 19, 88 S.Ct. 1868, 20 L.Ed.2d 889 (U.S. 1968); *State v. Kennedy, 107 Wash.2d 1, 4-5, 726 P.2d 445 (Wash. 1986).

Accordingly, A Lawful Investigative Detention Must Be Grounded Upon A Well-Founded Suspicion That Criminal Conduct Has Occurred Or Is About To Occur. See: *Terry v. Ohio, 392 U.S. 1, at 21, 88 S.Ct. 1868, 20 L.Ed 2d 889 (U.S. 1968); *State v. Kennedy, 107 Wash.2d 1, 6, 726 P.2d 445 (Wash. 1986).

Although Social Contact Is Not Transformed Into A Seizure By Virtue Of An Officer's Request For A Person To Take Their Hands Out Of Their Pockets, *State v. Nettles, 70 Wash.App 706, 708-09, 855 P.2d 699 (Div. 1, 1993), An Officer Demands That Hands Be Shown Under Circumstances In Which A Reasonable Person Would Not Feel Free To Decline. *State v. Carney, 142 Wash.App 197, 202, 174 P.3d 142 (Div. 2, 2007); *State v. Richardson 64 Wash.App 693, 696-97, 825 P.2d 754 (Div. 3, 1992)

Officer's *Wales And *Thiry Made The Decision To *Contact The Occupants Of The Cadillac And *Told Them To Keep Their *Hands Visible While Remaining In The Car. Slip Ops.

The Officer's In *Mr. Gore's Case Lacked Suspicions Of Criminal Activity Involving *Mr. Gore, Were There Must

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Be A Reasonable And Articulate Suspicion In Light Of The Totality Of The Circumstance While On Surveillance For *Mr. Kitt. Thus, *Mr. Gore's Argument Is With Merit An A Factual Assertion Supported By The 3.6 Hearing Records. See: *3 6 Hearing Reporting Proceedings. Slip Ops.

Therefore, "If Officer *Thiry Unconstitutionally Seized *Mr. Gore Before His *Arrest. The Exclusionary Rule Calls For Suppression Of Evidence Obtained Via The Government's Illegality." See: *Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (U.S. 1961), 86 Ohio.Law Abs. 513 (1961). *State v. Harrington, 167 Wash.2d 656, at 664, 222 P.3d 92 (Wash. 2009); *State v. Garvin, 166 Wash.2d 242, 254, 207 P.3d 1266 (Wash. 2009).

*Mr. Gore Is Entitled To Have His Convictions Set Aside And The Evidence Suppressed Under *Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (U.S. 1968). Slip Ops.

{2. THE TRIAL COURT ERRED IN NOT SUPPRESSING THE EVIDENCE FROM THE SEARCH OF *MR. GORE'S VEHICLE SINCE THE COMPLAINT FOR THE SEARCH WARRANT CONTAINED INSUFFICIENT FACTS TO ESTABLISH A NEXUS BETWEEN *MR. GORE'S VEHICLE AND ANY SUSPECTED CRIMINAL ACTIVITY.*}

The Fourth Amendment To The U.S. Constitution Provides.

The Right Of The People To Be Secure In Their Persons, Houses, Papers, And Effects, Against Unreasonable Searches And Seizures Shall Not Be Violated, And No Warrants Shall Issue, But Upon Probable Cause, Supported By Oath Or Affirmation, And Particularly Describing The Place To Be Searched, And The Person Or Things To Be Seized.

Article I, Sec. 7 Of The Washington Constitution Provides. "No Person Shall Be Disturbed In His Private Affairs, Or His Home Invaded, Without Authority Of Law."

*Mr. Gore Contends Here That The Search Warrant In His Case Is Insufficient Under State And Federal Constitutional Law, "The Warrant Clause Of The Fourth Amendment Of The United States Constitution And Article I, Sec. 7 Of The Washington Constitution Require That A Search Warrant Be Issued Upon A Determination Of Probable Cause Based Upon "Facts And Circumstances Sufficient To Establish A Reasonable Inference" That Criminal Activity Is Occurring Or That Contraband Exists At A Certain Location." See. *State v. Thein, 138 Wash.2d 133, 140, 977 P.2d 582 (Wash. 1999)

To This Issue *Mr. Gore Reasserts The Argument Of This Trial Counsel Supported With Points Of Law. See *Exhibit A.

Nonetheless Under Washington Law, "An Affidavit In Support Of A Search Warrant Must Set Forth Sufficient Facts And Circumstances To Establish A Reasonable Probability That "Criminal Activity" Is "Occurring Or Is "About To "Occur." See *State v. Petty, 48 Wash App 615, 621, 740 P.2d 879, review denied. 109 Wash 2d 1012 (Wash 1987).

The Officer's In *Mr. Gore Case Never Suspected Any Reasonable Suspicion Of Criminal Activity While On Their Surveillance To *Detain *Mr. Kitt On An Arrest Warrant At Pierce County Alliance And The Probable Cause Affidavit An Other Records Support This Factual Assertion *Mr. Gore Is Making. Slip Ops

The Fact That *Mr. Gore Gave *Mr. Kitt A Ride To Pierce County Alliance [And] {"Dropped Him Off"} Does Not Sufficiently Support The Detention Of *Mr. Gore Or The Seizure An Impound Of *Mr. Gore's Vehicle Which Was "Legally Parked" Because Under Washington Law, "Merely Associating With A Person Suspected Of Criminal Activity Does Not Strip Away The Protection Of The Fourth Amendment To The United States Constitution." See: *State v. Broadnax, 98 Wash 2d 289, 654 P 2d 96 (Wash. 1982) Slip Ops.

Moreover The Officer That Searched And Seized *Mr. Moton ("One Of The Occupant's Of The Cadillac") Had Taken A Firearm From His Waistband And Committed Misconduct By Placing The Firearm Back Into The Cadillac And Not Into The Police Evidence Room, So It Could Be Erroneously *Used In The Search Warrant Affidavit To Support Probable Cause To Search *Mr. Gore's Car. Slip Ops.

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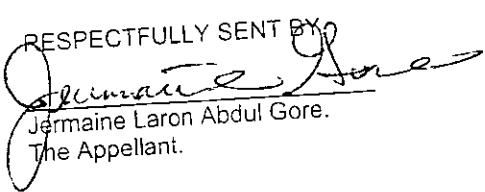
STATE OF WASHINGTON

BY ~~BY The Police Themselves.~~

However, Under Washington Law, "The Exigent Circumstances Cannot Be Created By The Police Themselves."
See: *State v. Hall, 53 Wash.App 296, 303, 766 P.2d 512, 517 (Div 1989).

Thus, Because Search Warrant Of *Mr. Gore's Vehicle Is Insufficient The Evidence Seized Must Be Suppressed
And His Convictions Set Side In The Interest Of Justice.

RESPECTFULLY SENT BY


Jermaine Laron Abdul Gore.
The Appellant.

{*CERTIFICATE OF SERVICE*}

I, *Jermaine Laron Abdul Gore, Certify That On The 1 Day Of 25th, 2017. I
Sent The {*True And Correct Original*} Of The Forgoing To: *Division Two Court Of Appeals, 950 Broadway, Ste
300, Tacoma.WA 98402 [And] A {*Working Copy*} Of The Same Was Sent To Pierce County Prosecutor's Office,
930 Tacoma Ave. S, Rm. 946, Tacoma,WA 98402 All Of The Foregoing Was Sent Out By First Class Institutional
Legal Mail

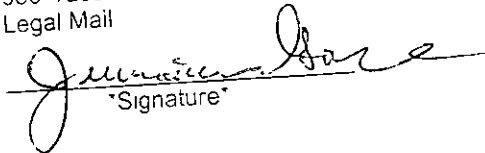
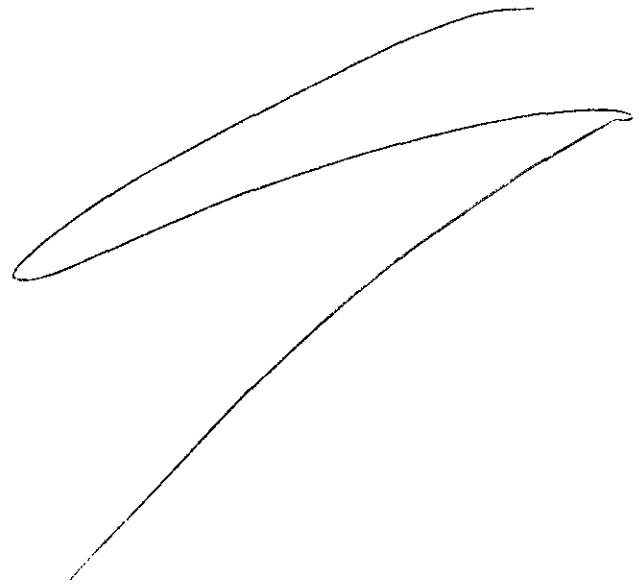

Signature

Exhibit A





IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

NO. 15-1-02681-1

Plaintiff,

DEFENDANT'S MOTION TO
SUPPRESS
(C-R 3.6)

JERMAINE LARON ABDUL GORE,

Defendant

RELIEF REQUESTED.

Through his undersigned attorney, defendant Jermaine Gore requests that the court suppress all evidence obtained from the search of Mr. Gore's vehicle

STATEMENT OF FACTS

All facts are taken from the complaint for the search warrant for Mr. Gore's vehicle and the declaration for determination of probable cause, attached hereto

On May 1, 2015, a drive-by shooting occurred in the area of 4509 South Union Street. The victim had been shot in the head. The victim was transported to a nearby hospital for treatment.

Witnesses to the shooting told police that the shots had been fired from the right rear window of a large white SUV. Video surveillance revealed that as the SUV left the scene it struck a parked vehicle and the right front corner and side of the SUV was damaged.

On May 3, 2015, police located an abandoned white Cadillac Escalade SUV that matched the SUV described by witnesses to the shooting and that was depicted in the video MOTION TO SUPPRESS - 1

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surveillance. The Cadillac Escalade had fresh damage consistent with the collision filmed on the surveillance video. The police impounded the Cadillac Escalade.

Later on May 3, 2015, police interviewed witnesses who stated that in the afternoon of May 1, 2015, Alexander Kutt had gotten into a white Cadillac Escalade and was observed in that Escalade seconds before the shooting. Witnesses also told police that the Cadillac Escalade in which Mr. Kutt had been observed was turned westbound onto South 45th Street, traveling towards South Union Street which was the next street to the west. Witnesses heard the shots fired seconds after the Cadillac Escalade made the turn.

On May 5, 2015, Mr. Kutt was arrested after he had been observed exiting a brown and white Cadillac Sedan DeVille. At the time Mr. Kutt was arrested, Laddell Moton, Jermonn Gore, and Jermaine Gore were in the Sedan DeVille. Jermaine Gore was the driver of the brown and white Cadillac Sedan DeVille.

Police detained and searched Mr. Moton and discovered he had a 9mm piston in his waistband and was also in possession of suspected rock cocaine. Mr. Moton was arrested for unlawful possession of a firearm and unlawful possession of a controlled substance. Police placed the pistol found on Mr. Moton's person back in the brown and white Sedan DeVille.

Jermonn Gore was arrested for an unrelated shooting. While being interrogated, Jermonn Gore told police that there was a guitar case inside the brown Cadillac that contained a semiautomatic rifle and that he was responsible for it. Police observed a black guitar case on the back seat of the brown Cadillac.

Mr. Kutt denied any involvement in or knowledge of the drive-by shooting. Jermaine Gore denied all knowledge of the shooting and any drugs or firearms in his car.

The victim of the drive-by shooting died on May 6, 2015.

On May 7, 2015, police sought and were granted a warrant to search the brown MOTION TO SUPPRESS - 2

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1 Cadillac Sedan DeVille for purposes of "further[ing] the investigation and prosecution of [the
2 drive by shooting] as well as the charge of [unlawful possession of a firearm] and [unlawful
3 possession of a controlled substance] on Mr. Moron and potentially Jermaine Gore."

4 When police searched the brown Cadillac they recovered the following items: the
5 guitar case on the back seat which contained an assault rifle, a backpack on the rear
6 floorboard that contained several loaded firearms, a digital scale, the bags of marijuana, a bag
7 with 13 grams of suspected cocaine base, and a bag with suspected powder cocaine; a box of
8 ammunition was found in the trunk; a bag containing 9 grams of suspected cocaine base was
9 found stuffed between the center console and the driver's side seat; in a center console
10 compartment were DOC paperwork for Jermaine Gore, a bag with suspected
11 methamphetamine, a bag of marijuana, and a loaded revolver

12 Jermaine Gore has been charged with unlawful possession of a firearm in the first
13 degree and unlawful possession of a controlled substance with two firearm enhancements.

14 III STATEMENT OF ISSUES:

15 Should this court suppress all evidence found during the search of Mr. Gore's vehicle
16 where there was insufficient probable cause to issue the search warrant?

17 IV EVIDENCE RELEIED UPON.

18 Defendant Jermaine Gore relies upon the record and file herein and upon the
19 following argument
20 V ARGUMENT.

21 1. The search of Mr. Gore's vehicle was unlawful since the complaint for the
22 search warrant contained insufficient facts to establish a nexus between
23 Mr. Gore's vehicle and any suspected criminal activity.

24 The Fourth Amendment to the US Constitution provides:

25 The right of the people to be secure in their persons, houses, papers, and
effects, against unreasonable searches and seizures, shall not be violated, and
no Warrants shall issue, but upon probable cause, supported by Oath or

MOTION TO SUPPRESS - 1

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1 affirmation, and particularly describing the place to be searched, and the
2 persons or things to be seized

3 Article 1, § 7 of the Washington Constitution provides: "No person shall be disturbed
4 in his private affairs, or his home invaded, without authority of law."

5 The warrant clause of the Fourth Amendment of the United States Constitution and
6 article 1, section 7 of the Washington Constitution require that a search warrant be issued
7 upon a determination of probable cause based upon "facts and circumstances sufficient to
8 establish a reasonable inference" that criminal activity is occurring or that contraband exists
9 at a certain location.¹

10 An affidavit in support of a search warrant must set forth sufficient facts and
11 circumstances to establish a reasonable probability that criminal activity is occurring or is
12 about to occur.² An affidavit is sufficient to establish probable cause for a search if it

13 contains facts from which an ordinary, prudent person would conclude that a crime had
14 occurred and evidence of the crime could be found at the location to be searched.³ Affidavits
15 are to be read as a whole, in a commonsense, nontechnical manner, with doubts resolved in
16 favor of the warrant.⁴

17 Reasonableness is the key in determining whether a search warrant should issue.⁵

18 The issuing magistrate's determination of probable cause is reviewed for abuse of discretion
19 and is given great deference by the reviewing court.⁶

20 While deference is to be given to the magistrate's ruling and doubts are to be resolved
21 in favor of the warrant's validity,⁷ the deference accorded to the magistrate is not boundless.⁸

22 ¹ *State v. Jhon*, 138 Wn 2d 131, 140, 977 P 2d 582 (1999)

23 ² *State v. Perry*, 48 Wn App 615, 621, 740 P 2d 879, review denied 106 Wn 2d 1012 (1987)

24 ³ *State v. Stone*, 56 Wn App 153, 158, 782 P 2d 1091 (1989)

25 ⁴ *State v. Davis*, 49 Wn App 229, 232, 692 P 2d 890 (1985), review denied, 103 Wn 2d 1020 (1985)

⁵ *State v. Chiswell*, 106 Wn 2d 54, 73, 720 P 2d 808 (1986)

⁶ *State v. Clark*, 143 Wn 2d 731, 748, 24 P 3d 1006 (2001)

⁷ *State v. Skagell*, 95 Wn 2d 898, 907, 632 P 2d 44 (1981)

⁸ *State v. McNeill*, 114 Wn 2d 701, 770, 791 P 2d 222 (1990)

MOTION TO SUPPRESS - 4

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1 the review of a search warrant's validity is limited to the information the magistrate had
2 when the warrant was originally issued.⁹ Review is limited to the four corners of the
3 affidavit supporting probable cause.¹⁰

4 The affidavit must set forth more than mere conclusions. The underlying facts and
5 circumstances leading to the conclusions must be included. Otherwise, the magistrate
6 becomes no more than a rubber stamp for the police.¹¹

7 It is only the probability of criminal activity, not a prima facie showing of it, that
8 governs probable cause.¹² An affidavit of probable cause must show "a nexus between
9 criminal activity and the item to be seized, and also a **nexus between the item to be seized**
10 **and the place to be searched**."¹³ The magistrate is entitled to make reasonable inferences
11 from the facts and circumstances set out in the affidavit.¹⁴ However, mere speculation or an
12 officer's personal belief will not suffice.¹⁵

13 "[I]f information contained in an affidavit of probable cause for a search warrant was
14 obtained by an unconstitutional search, that information may not be used to support the
15 warrant."¹⁶ The court must view the warrant without the illegally gathered information to
16 determine if the remaining facts present probable cause to support the search warrant.¹⁷

17 In *Theron*, the Washington Supreme Court specifically rejected the argument made by
18
19 ⁹ *Agular v. State of Texas*, 378 U.S. 108, 84 S. Ct. 1509, 1522 n.1 (1964); *State v. Stephens*, 37 Wn App 76, 80,
20 678 P.2d 832 (1984).
21 ¹⁰ *State v. Neff*, 165 Wn. 2d 177, 182, 196 P.3d 658, 661 (2008), citing *State v. Murray*, 110 Wash.2d 706, 709-
22 10, 757 P.2d 487 (1988); *Wong Sun v. United States*, 371 U.S. 471, 481-82, 83 S.Ct. 407, 414, 9 L. Ed. 2d 441
23 (1963).
24 ¹¹ *United States v. Temprea*, 380 U.S. 102, 13 L. Ed. 2d 684, 85 S.Ct. 741 (1965); *Agular v. Texas*, 378 U.S.
25 108, 84 S.Ct. 723; *State v. Stephens*, 37 Wn App 76, 79, 678 P.2d 832, review denied, 101 Wn.2d 1025 (1984).
26 ¹² *State v. Hocking*, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004).
27 ¹³ *Theron*, 138 Wn.2d at 140, 977 P.2d 582.
28 ¹⁴ *In re Fern, Reclaim of Tim*, 139 Wn.2d 581, 596, 989 P.2d 512 (1999) (quoting *State v. Helmke*, 86 Wn.2d
29 91, 93, 542 P.2d 115 (1975)).
30 ¹⁵ *State v. Anderson*, 105 Wn App 223, 229, 19 P.3d 1094 (2001).
31 ¹⁶ *State v. Ross*, 141 Wn.2d 304, 311-12, 4 P.3d 130 (2000).
32 ¹⁷ *Reis*, 141 Wn.2d at 314-15, 4 P.3d 110.
33 MOTION TO SUPPRESS - 5

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1 the State that "it is reasonable to infer evidence of drug dealing will likely be found in the
2 homes of drug dealers."¹⁸ The *Theron* court characterized this logic as "conclusory
3 predictions" and ruled that "[b]lanket inferences of this kind substitute generalities for the
4 required showing of reasonably specific 'underlying circumstances'."¹⁹

5 ^a *All evidence discovered pursuant to the initial seizure of the occupants of the*
6 *brown and white Cadillac must be excluded from the complaint for the search*
7 *warrant because the initial detention was unlawful.*

8 1. *Jermame Gore has standing to challenge the seizure of all the*
9 *occupants of the brown and white Cadillac.*

10 "A defendant may challenge a search or seizure only if he or she has a personal
11 Fourth Amendment privacy interest in the area searched or the property seized. The
12 defendant must personally claim a justifiable, reasonable, or legitimate expectation of
13 privacy that has been invaded by governmental action."²⁰

14 It is well settled that article I, section 7 of the Washington Constitution provides
15 greater protection to individual privacy rights than the Fourth Amendment.²¹ Article I,
16 section 7 provides that "[n]o person shall be disturbed in his private affairs, or his home
17 invaded, without authority of law." This provision is violated when the State unreasonably
18 intrudes upon a person's private affairs.²²

19 Although automatic standing has been the subject of some controversy, and has been
20 abandoned by the U.S. Supreme Court, it "still maintains a presence in Washington."²³

21 A person may rely on the automatic standing doctrine only if the challenged police

22 ¹⁸ *Theron*, 138 Wn.2d at 147, 977 P.2d 582.
23 ¹⁹ *Theron*, 138 Wn.2d at 147, 977 P.2d 582.
24 ²⁰ *State v. Conacher*, 124 Wn.2d 778, 787, 881 P.2d 210 (1994) (internal citations omitted).
25 ²¹ *E.g., State v. Heubach*, 129 Wn.2d 61, 69 n.1, 917 P.2d 563 (1996); *State v. Williams*, 102 Wn.2d 733,
26 741-42, 689 P.2d 1065 (1984).
27 ²² *State v. Bodanz*, 115 Wn.2d 571, 577, 800 P.2d 1112 (1990); *State v. Williams*, 102 Wn.2d 506, 510, 688 P.2d
28 151 (1984).
29 ²³ *State v. Williams*, 142 Wn.2d 17, 22, 1 P.3d 714 (2000).
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1 action produced the evidence sought to be used against him ²⁴ "to assert automatic standing a
2 defendant (1) must be charged with an offense that involves possession as an essential
3 element, and (2) must be in possession of the subject matter at the time of the search or
4 seizure ²⁵ As to the second requirement, possession may be actual or constructive to support
5 a criminal charge ²⁶
6 A defendant has actual possession when he or she has physical custody of the item
7 and constructive possession if he or she has dominion and control over the item ²⁷ Dominion
8 and control means that the object may be reduced to actual possession immediately ²⁸
9 "[D]ominion and control over premises raises a rebuttable inference of dominion and
10 control over [] drugs [found on the premises] ²⁹ A vehicle is a "premises" for purposes of
11 this rule ³⁰
12 Jermaine Gore has been charged with the possessory crimes of unlawful possession of
13 a firearm and unlawful possession of a controlled substance Jermaine Gore may be said to
14 have been in actual or constructive possession of the drugs and firearms found in the brown
15 and white Cadillac because he was the driver of the vehicle in which the drugs and firearms
16 were found Because Jermaine Gore has been charged with a possessory offense and
17 was arguably in constructive possession of the prohibited items, Jermaine Gore has
18 standing to challenge the initial seizure of the occupants of the brown and white
19 Cadillac because the seizure of the occupants lead to the search of the vehicle
20
21 11 The initial seizure of the occupants of the white and brown Cadillac
22 was unlawful.
23 ²⁴ *Brigham*, 142 Wn 2d at 23, 11 P 3d 714
24 ²⁵ *State v. Simpson*, 95 Wn 2d 170, 181, 622 P 2d 1190 (1980)
25 ²⁶ *State v. Callahan*, 77 Wn 2d 27, 459 P 2d 400 (1969)
26 ²⁷ *Callahan*, 77 Wn 2d at 29, 459 P 2d 400
27 ²⁸ *State v. Jones*, 146 Wn 2d 328, 333, 45 P 3d 1062 (2002)
28 ²⁹ *State v. Cundick*, 83 Wn App 204, 208, 921 P 2d 572 (1996)
29 ³⁰ *State v. Atchew*, 4 Wn App 653, 656, 484 P 2d 942 (1971)
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1 When police officers have a "well-founded suspicion not amounting to probable
2 cause" to arrest, they may nonetheless stop a suspected person, identify themselves, and ask
3 that person for identification and an explanation of his or her activities ³¹ A police officer
4 may stop and detain a person for questioning if he reasonably suspects that the person is
5 engaged in criminal activity ³²
6 An investigatory detention is a seizure ³³ To support an investigative detention, the
7 circumstances must show there is a substantial possibility that criminal conduct has occurred
8 or is about to occur ³⁴ In Washington, the officer must have a "well founded suspicion, based
9 on objective facts, that the person is connected to potential or actual criminal activity" ³⁵
10 Such facts are "judged against an objective standard" would the facts available to the officer
11 at the moment of the seizure or the search "warrant a [person] of reasonable caution in the
12 belief" that the action taken was appropriate? ³⁶
13 The level of articulable suspicion required for a car stop is no greater than required
14 for a pedestrian stop ³⁷ The circumstances must be more consistent with criminal conduct
15 than with innocent behavior. ³⁸
16 A reviewing court decides whether reasonable suspicion existed based on an
17 objective view of the known facts ³⁹ The reviewing court does not base its determination of
18
19 ³¹ *State v. Glover*, 116 Wn 2d 509, 513, 806 P 2d 760 (1991)
20 ³² *Trapp v. Ohio*, 392 U.S. 1, 88 S Ct 1868, 20 L Ed 2d 889 (1968), *State v. Brigham*, 102 Wn 2d 733, 689 P 2d
21 1065 (1984)
22 ³³ *State v. Rankin*, 151 Wn 2d 689, 695, 92 P 3d 202 (2004)
23 ³⁴ *State v. Menendez*, 137 Wn 2d 208, 223, 970 P 2d 722 (1999), *abrogated on other grounds* *Hendlin v*
24 *Calabiano*, 551 U.S. 249, 127 S Ct 2400, 168 L Ed 2d 132 (2007)
25 ³⁵ *State v. Kennedy*, 107 Wn 2d 1, 7, 726 P 2d 445 (1986)
26 ³⁶ *State v. Almaraz-Chamun*, 94 Wn App 563, 566, 972 P 2d 468 (1999) (*quoting* *State v. Barber*, 118 Wn 2d
27 335, 343, 823 P 2d 1068 (1992))
28 ³⁷ *State v. Kennedy*, 107 Wn 2d 1, 6, 726 P 2d 445 (1986) (*quoting* *Jehowah v. Prince*, 440 U.S. 648, 99 S Ct
29 1391, 59 L Ed 2d 660 (1979))
30 ³⁸ *State v. Presley*, 64 Wn App 591, 596, 825 P 2d 749 (1992)
31 ³⁹ *State v. Atchew*, 80 Wn App 143, 147, 906 P 2d 1013 (1995), *review denied* 129 Wn 2d 1019, 919 P 2d 900
32 (1996)
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reasonable suspicion upon the officer's subjective belief"⁴⁰

For reasons unexplained in the complaint for the search warrant, the occupants of the

white and brown Cadillac were seized by police and interrogated after Mr. Kitt had been arrested after leaving the Cadillac. At the time the occupants of the Cadillac were seized,

police had already impounded the vehicle used in the May 1, 2015 drive-by shooting.

The police were unaware of any information linking the brown and white Cadillac to any crime. Similarly, the police were unaware of the identity of the occupants of the brown and white Cadillac and had no reason to believe that the occupants were

involved in any prior or ongoing criminal activity.

The police were aware of no facts regarding the individuals occupying the

Cadillac, much less knowledge of facts that would support an objectively reasonable

belief that there was a substantial possibility that criminal conduct had occurred or was about to occur. All incriminating evidence (i.e. Mr. Moton's possession of rock cocaine and a handgun and the identity of Jermonn Gore and the existence of an outstanding arrest warrant for Jermonn Gore) was discovered after the individuals had been detained by police and questioned

The police were unaware of facts sufficient to support an investigatory detention of any of the occupants of the brown and white Cadillac after Mr. Kitt had exited the vehicle and been arrested. Because the police lacked knowledge of any facts suggesting the occupants of the Cadillac were involved in any criminal activity, the detention and questioning of the occupants was unlawful.

iii. All evidence discovered pursuant to the initial unlawful seizure of the occupants of the Cadillac must be suppressed and excluded from the complaint for the search warrant.

If the initial stop of an individual was unlawful, the subsequent search based on that

⁴⁰ *Michell*, 80 Wn App at 147, 906 P 2d 1013
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stop and fruits of that search are inadmissible as fruits of the poisonous tree "⁴¹ As stated above, "if information contained in an affidavit of probable cause for a search warrant was obtained by an unconstitutional search, that information may not be used to support the

warrant "⁴²

The initial seizure and interrogation of the occupants of the brown and white Cadillac was unlawful. Accordingly, all evidence derived from the detention and interrogation must be both suppressed and not considered by this court in determining whether the complaint contained sufficient evidence to establish probable cause for the search warrant to issue.

b The complaint for the search warrant contained insufficient facts to support the issuance of the warrant to search the Cadillac for anything other than Jermonn Gore's guitar case.

As stated above, in order for a search warrant to issue, the affidavit of probable cause must show "a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched "⁴³ Here, the complaint for the search warrant stated that, "the search and recovery of any firearms within the Cadillac in question would further the investigation and prosecution of [the May 1, 2015 drive-by shooting] as well as the charge of U P O F and U P C S on Moton and possibly Jermonn

Gore "

The complaint contained no facts creating a nexus between the brown and white Cadillac and the drive-by shooting.

The only facts contained in the complaint that link the brown and white Cadillac to the drive-by shooting was the fact that Mr. Kitt, a suspect in the drive-by shooting, was seen exiting the brown and white Cadillac. However, at the time the search warrant was applied for the police had already arrested Mr. Kitt and seized the

⁴¹ *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986), citing *Brong Sun v. United States*, 371 U.S. 471, 9 L Ed 2d 44, 83 S Ct 407 (1961)

⁴² *State v. Rous*, 141 Wn 2d 304, 311-12, 4 P 3d 130 (2000)

⁴³ *Thorn*, 138 Wn 2d at 140, 977 P 2d 582

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1 Cadillac SUV used in the shooting.

2 The complaint states that "recovery of any firearms in the Cadillac in question

3 would further the investigation" of the drive-by shooting, but fails to articulate how. At

4 best, this statement in the complaint is pure speculation and nothing more than the

5 officer's personal conjecture that something helpful might be found in the Cadillac.

6 The police had knowledge that the Cadillac contained only one firearm- the 9mm

7 handgun removed from Mr. Moton's waistband and placed in the Cadillac by police.

8 However, the complaint contains no facts linking Mr. Moton to the drive-by shooting or

9 the gun found on his person to the drive-by shooting

10 Jermohn Gore had told police that the guitar case seen by police in the back seat of

11 the Cadillac contained an assault rifle, but the police had no reason to believe he was telling

12 the truth.

13 Further, both the firearm found on Mr. Moton and Jermohn Gore's statements are

14 the fruit of the initial unlawful seizure of the occupants of the Cadillac and must be excluded

15 from the complaint for the warrant for purposes of this court's determination of whether the

16 complaint contained sufficient facts to establish probable cause for a warrant to issue

17 The complaint contains no facts even hinting that the brown and white Cadillac was

18 related to the drive-by shooting or contained evidence related to the shooting

19 ii The complaint for the warrant established only that the Cadillac

20 contained evidence of Mr. Moton's crime of unlawful possession of a

21 firearm and that the police had placed that evidence in the vehicle.

22 At most, the complaint for the warrant established that the Cadillac contained

23 the firearm that was taken from Mr. Moton's waistband that was the basis of the

24 unlawful possession of a firearm charge against him and that had been placed in the

25 Cadillac by the police.

Police cannot use an "evident circumstance" created by the police as an excuse to

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1 perform a search without a warrant.⁴⁴ Similarly, police should not be allowed to to base

2 probable cause to search an area on incriminating evidence they placed in that area. Standing

3 alone, the fact that police place incriminating evidence in an area does not create a nexus

4 between that area and the crime the incriminating evidence is related to. All evidence

5 relating to Mr. Moton's possession of a firearm and controlled substance were found on Mr

6 Moton's person and the complaint contains no suggestion that any further drugs or firearms

7 related to Mr. Moton would be located in the Cadillac

8 The complaint for the warrant contained insufficient facts to establish both a nexus

9 between the place to be searched and the crimes being investigated relating to Mr. Moton.

10 iii At most, the complaint for the warrant established probable cause for

11 police to seize the guitar case identified by Jermohn Gore as

12 belonging to him and containing an assault rifle.

13 As stated above, the evidence derived from the initial unlawful seizure of the

14 occupants of the Cadillac must be ignored when this court reviews the complaint to

15 determine if it was sufficient to support issuing the search warrant. If this information is

16 ignored, then the complaint for the warrant contains no facts which even hint at any nexus

17 between the Cadillac and any criminal activity.

18 However, even if this court were to consider the unlawfully obtained evidence, at

19 most, the complaint creates probable cause for the police to search the Cadillac for the guitar

20 case that Jermohn Gore stated was his responsibility and that contained an assault rifle. The

21 warrant should have been limited in scope to permit the police to search the Cadillac for the

22 guitar case, remove the guitar case from the brown and white Cadillac, and open the guitar

23 case to determine if it contained an assault rifle. No facts contained in the complaint created

24 a nexus between the trunk of the Cadillac, the console of the Cadillac, the closed backpack

25 ⁴⁴ "The evident circumstances cannot be created by the police themselves." *Nare v. Hall*, 53 Wn. App. 206,

303, 706 P.2d 512, 517 (1989)

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1 located on the rear floor of the Cadillac, or any other portion of the Cadillac to any criminal
2 activity

3 **2. This court should suppress all evidence discovered during the search of**
4 **the brown and white Cadillac.**

5 Generally, evidence seized during an illegal search is suppressed under the
6 exclusionary rule.⁴⁵ In addition, evidence derived from an illegal search may also be subject
7 to suppression under the fruit of the poisonous tree doctrine.⁴⁶

8 Where a search warrant issued without probable cause, evidence gathered pursuant to
9 the search must be suppressed.⁴⁷

10 As discussed above, the complaint for the search warrant for the brown and white
11 Cadillac contained insufficient facts to establish a nexus between the Cadillac and any
12 criminal activity or evidence of any crime. This court should suppress all evidence
13 discovered pursuant to the search of the Cadillac

14 **VI CONCLUSION**

15 All evidence discovered pursuant to the initial seizure and interrogation of the
16 occupants of the Cadillac must be suppressed. Further, all evidence discovered pursuant to
17 the search of the brown and white Cadillac must be suppressed

18 DATED, October __, 2015.

19
20 Bryan Hershman, WSBA# 14380
21 Attorney for Defendant Lloyd
22

23 ⁴⁵ See *State v. Jackson*, 138 Wn.2d 347, 359, 979 P.2d 813 (1999)

24 ⁴⁶ See *State v. O'Hernan*, 70 Wn.2d 425, 428, 423 P.2d 530 (1967) (citing *Wong Sun v. United States*, 371 U.S.
471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963))

25 ⁴⁷ *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *State v. Crowley*, 61 Wn.App.
29, 808 P.2d 773, review denied, 117 Wn.2d 1099, 816 P.2d 1223 (1991)
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